IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY AND INTESTATE JURISDICTION

PETITION NO.509 OF 1998

Chapsey Rajshi Mistry ...Deceased.

Dharmendra Singh Choudhary. ...Petitioner.

Vs

Lilaben Damodardas Kathrecha. ...Caveatrix.

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Mr.F.Devitre i/b. M/s.Mehta & Co. for Petitioner.

Mr.H.G.Pandit i/b. M/s.Bagla Dandekar & Co. for Defendant-Caveatrix.

Mr.Sanjay Jain i/b. N.G.Raut, for Ozone Finance & Investment Ltd.

**CORAM: D.K.DESHMUKH,J.**

**DATED: 12th October,2006**

**P.C.**:-

1. There is only one caveat filed in this petition. The learned Counsel appearing for Caveator seeks leave of the Court to withdraw the caveat. The Caveat is permitted to be withdrawn. As there is only one caveat filed in the petition and that caveat has been withdrawn,

the office is directed to proceed in accordance with law for issuance of probate.

2. An objection is raised on behalf of Ozone Finance and Investment Ltd. relying on order dated 9.10.2006 passed in Suit (lodg) no.2909 of 2006 that because the caveator has not given 72 hours notice to the above said company by the caveator informing about withdrawal of caveat, the Court should not permit the caveator to withdraw her caveat.

3. Firstly, it is pointed out that as previously the plaintiff and the caveator-defendant intended to file consent terms, the notice of the consent terms was served on the said company on 9.10.2006 and therefore, it is substantial compliance of the order passed by the learned single Judge dated 9.10.2006. In any case, now the parties are not intending to file any consent terms in the probate petition. The Caveator wants to simply withdraw the caveat. In my opinion, when the caveator wants to withdraw the caveat that she has filed in the petition, it will not be within the power of any Court to make either an interim order or a final order preventing her from withdrawing her caveat. In my opinion, therefore, no useful purpose will be served by postponing issuance of direction to the office to take steps to grant probate in accordance with law.

4. On behalf of Ozone Finance and Investment Company it is submitted that the company is lodging a caveat in this petition and therefore, office should not be directed to issue probate. So far as the company is concerned, its interest , according to it, is that it had entered into an agreement to purchase the property of the deceased with the deceased and therefore, they are entitled to maintain the caveat. It is clear that for maintaining a caveat the party must have caveatable interest in the property as heir. Even assuming that the company has entered into an agreement to purchase the property, the settled law is that an agreement to purchase the property does not create any interest in the property, the only right which is created is to have another document executed in its favour. The time fixed by the Court for filing caveat is also over. Reliance is placed by the learned Counsel appearing for the Company on two judgments of the Calcutta High Court. So far as this Court is concerned, the settled law is that the person who is filing caveat must have caveatable interest as heir. Having interest in the property left behind by the deceased may not be enough to maintain the caveat because the property left behind by the deceased-testator is not the subject matter of the probate petition. What is the subject matter of the probate petition is genuineness of the Will only. The company which is claiming to have entered into an agreement to purchase the property of the deceased can hardly be said

to have any say on the question whether a Will is genuine or not. In any case, grant of probate will not affect the interest of the company adversely because the questions of title are not decided in the probate petition. In this view of the matter therefore, I have made the order accordingly.

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